

## Chapter 80-5-3

### Regulations Regarding the Sale of Annuities By Financial Institutions

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#### **80-5-3-.01 Sale of Annuities by Financial Institutions; definitions.**

(1) Fixed and variable annuities may be sold by financial institutions in Georgia, subject to regulations of the Department of Banking and Finance, regulations of the Department of Insurance and other applicable law.

(2) Financial institutions may sell or market fixed and variable annuities through state licensed insurance/annuity agents. The agents may be either employees of the financial institution or independent agents who have contracted with the financial institution to sell annuities. Prior approval of the Department of Banking and Finance is not required for a financial institution to sell annuities.

(3) As used in this chapter, the term:

(a) "Agency" means a person, including corporations, subsidiary corporations, partnerships, non-natural persons, etc., associated with or in the form of a financial institution who represents one or more insurers and is engaged in the business of soliciting or procuring or accepting applications for annuity sales;

(b) "Agent" means an individual appointed or employed by an insurer who solicits or procures applications for insurance; who in any way, directly or indirectly, makes or causes to be made any insurance contract for or on account of an insurer; or who as a representative of an insurer receives money for transmission to the insurer for an insurance contract, anything in the application or contract to the contrary withstanding, and who has on file with the Commissioner of Insurance a certificate of authority from each insurer with whom the agent places insurance;

(c) An "annuity" is a contract of insurance underwritten by an insurance company that pays an income benefit (monthly, quarterly, semiannually, or annually) for: 1) the life of a person (annuitant), 2) the lives of two or more persons, or 3) a specified period of time. Payments are made for a stated period of time or for the life or lives of the person or persons specified in the contract. The term does not cover the proceeds of life insurance no matter how payable;

(d) "Financial institution" means a state or national bank, building and loan or savings and loan association, bank holding company, or a subsidiary or affiliate of any of the above;

(e) A "fixed annuity" means one party agrees to pay to the annuitant a stipulated amount (monthly, quarterly, semiannually, or annually, as desired) throughout the annuitant's lifetime whereby the dollar amount will not fluctuate regardless of adverse changes in the insurance company's mortality experience, investment return, and expenses;

(f) "Insurance/annuity agent" means an individual appointed or employed by a financial institution who solicits or procures applications for annuities; who in any way, directly or indirectly, makes or

causes to be made any annuity contract for or on account of an insurer; and who has on file with the Commissioner of Insurance a certificate of authority from each insurer with whom the agent places annuities;

(g) A "variable annuity" means a contract that pays an annuitant income payments of which the amounts vary in accordance with the market value of the securities in the separate account of the insurer on the respective valuation days.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.02 Notification of Intent to Sell Annuities.**

A financial institution that wishes to sell annuities must give prior notification to the Department of Insurance, with a copy of the notice and any subsequent amendments to the Department of Banking and Finance.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.03 Licensure of Agents and Agency.**

(1) A financial institution that intends to sell annuities either through an independent agent or through its own licensed employees shall be considered an Agency under Department of Insurance Regulation § 120-2-71-.04 and must meet any requirements of that Regulation Chapter.

(2) Any individual who solicits, sells or markets annuities in association with a financial institution located in Georgia must be licensed as an insurance/annuity agent by the Department of Insurance.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.04 Agreement Between Independent Insurance/Annuity Agent or Agency and Financial Institution.**

(1) An arrangement for the sale of annuities between an independent insurance/annuity agent or agency and a financial institution must be governed by a written agreement approved by the financial institution's board of directors. Such agreements will not be required if the agent is an employee of the financial institution. Compliance with the agreement should be periodically monitored by the financial institution's senior management. The agreement must set forth the responsibilities of the parties, the terms and conditions of the arrangement, and the compensation to be received by the financial institution. The agreement must also, at a minimum, contain provisions which:

(a) Specify that each insurance/annuity agent will comply with all applicable laws and regulations;

(b) Authorize the financial institution, the Department of Banking and Finance, and the Department of Insurance to have access to the financial institution's premises where the insurance/annuity agent conducts annuities sales in order to inspect books and records and other relevant information maintained by the insurance/annuity agent with respect to such annuity sales and to perform such related regulatory functions;

(c) Authorize the financial institution to monitor the insurance/annuity agent and periodically review and verify that the insurance/annuity agent or agency and its representatives are complying with the agreement with the financial institution; and

(d) Require the insurance/annuity agent or agency contracting with the financial institution to indemnify the institution from any liability resulting from unlawful, wrongful, improper actions or representations on the part of the insurance/annuity agent with regard to the sale of annuities in its association with the financial institution.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.05 Location of Sale of Annuities.**

(1) When insurance/annuity agent services are provided on the premises of a financial institution, the insurance/annuity agent and the financial institution have a heightened responsibility to ensure appropriate measures are implemented to clearly segregate and distinguish the insurance/annuity agent services from retail deposit taking operations of the financial institution. Insurance/annuity agent services shall be conducted in a physical location distinct from the area where the financial institution's insured deposits are routinely taken.

(2) No insurance/annuity agent services shall be conducted from the teller area.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.06 Signage.**

(1) Advertisements for fixed or variable annuities physically located in financial institutions shall be subject to Department of Insurance law (O.C.G.A. § 33-6) and regulation and applicable Department of Banking and Finance law and regulation.

(2) The insurance/annuity agent must display his/her name and status as an agent in the area where annuity transactions occur.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.07 Advertisements.**

(1) "Advertisement" for the purposes of these regulations shall mean, consistent with Chapter 120-2-11 of the regulations of the Department of Insurance, any oral or written promotional or sales material which is directed to the public and concerns annuity products offered through an insurance/annuity agent in association with a financial institution.

(2) Such advertisement shall conform to all the applicable law and regulations of the Department of Insurance, in addition to the regulations herein.

(3) All advertisements sent to prospective customers shall clearly reflect the source of the communication. If the insurance/annuity agent is an employee of the financial institution, he/she shall be identified as representing both the financial institution and the insurer. If the insurance/annuity agent is an independent agent not employed by the financial institution, he/she must disclose that fact.

(4) No advertisement shall suggest or convey any inaccurate or misleading impression about the nature of the annuity product. Premiums shall not be referred to as deposits. Terminology used in connection with annuity contracts must be distinguishable from that used in connection with traditional banking products. All advertisements must conspicuously disclose:

(a) The annuity product is not insured by the FDIC;

(b) The annuity product is not a deposit or other obligation of, and is not underwritten or guaranteed by, the financial institution; and

(c) The annuity product is subject to investment risks. The market value of the investment may fluctuate, causing possible loss of the principal amount invested.

(5) If the product or program name under which an annuity contract is marketed includes the name of a financial institution or the name of a program associated with the financial institution, the product or program name must also identify the insurance company which is issuing and underwriting the annuity contract.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.08 Disclosures.**

(1) At the time of sale of an annuity product, the written disclosure below or one which contains all its elements shall be made.

The annuity products described or referred to:

(a) Are not deposits and are not insured by the FDIC;

(b) Are not obligations of or guaranteed by the financial institution; and

(c) Are subject to investment risk, including interest rate risk. The market value of the investment may fluctuate, causing possible loss of the principal amount invested; and

(d) Are unrelated to and not a condition to the provision or term of any banking service or activity.

(2) At the time of sale of an annuity product, the insurance/annuity agent shall deliver to and receive back from the customer a disclosure conforming to paragraph (1) of this Rule accompanied by a signed statement that the customer has read and understands the meaning of the disclosures. A copy of this signed statement shall be given to the customer and to the financial institution.

(3) The disclosures given to the customer shall be conspicuous and presented in a clear and concise manner, with no qualifying remarks.

(4) In addition to paragraph (1) of this Rule, the insurance/annuity agent shall, during discussions of annuity products with the customer, make these disclosures orally.

(5) Where applicable, the following disclosures shall also be included in the written disclosure given to the customer:

(a) The existence of an advisory or other material relationship between the financial institution, or an affiliate of the financial institution, and a company whose products are offered or sold by the insurance agent on the premises of the financial institution;

(b) The existence of any affiliate or subsidiary relationship between the financial institution and the insurance agent that is providing such insurance agent services on the premises of the financial institution; or

(c) The existence of any fees, penalties or surrender charges associated with the annuity product that is being offered or sold.

(6) The insurance/annuity agents shall identify themselves to the customer as being either an employee of the financial institution or an independent licensed insurance/annuity agent.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.09 Activities of Licensed Agents; Bank Personnel.**

(1) Solicitation and sale of annuity products in association with a financial institution may be provided only by appropriately licensed insurance/annuity agents. Unlicensed employees of the insurance/annuity agent or financial institution may, however, provide clerical or ministerial assistance. Unlicensed employees of the financial institution may refer customers of the financial institution interested in the purchase of annuity products to the appropriate agent in the financial institution or may inform the customer how to reach the agent.

(2) Except as permitted by these regulations, an unlicensed employee of the financial institution shall not discuss or promote annuity products or respond to questions about such investments.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.

#### **80-5-3-.10 Severability.**

If any provision of the rules in this Chapter 80-5-3 or the application of them to any financial institution or circumstance is held invalid, such invalidity shall not affect the provisions or applications of the rules herein which can be given effect without the invalid portion. To that end, the provisions of these rules are declared to be severable.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(10); § 7-1-288.